

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

In the Matter of	)	
	)	
Application by Verizon New England Inc., Bell	)	CC Docket No. 00-176
Atlantic Communications, Inc. (d/b/a Verizon	)	
Long Distance), NYNEX Long Distance	)	
Company (d/b/a Verizon Enterprise Solutions),	)	
And Verizon Global Networks Inc., for	)	
Authorization to Provide In-Region, InterLATA	)	
Services in Massachusetts	)	

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## I. INTRODUCTION AND SUMMARY

This latest section 271 application presents the Commission with a unique choice. Because this application is the second to address xDSL loops in full, the Commission has a roadmap – the approval of Southwestern Bell’s application for Texas – to follow in determining whether Verizon has met its xDSL loop obligations in Massachusetts. Indeed, Verizon has reported on its performance in Massachusetts in the exact same loop metrics as the Commission relied upon in approving the Texas application. Yet there is one important difference – Verizon is grossly out of parity in each of the DSL metrics that the Commission considered of vital importance in Texas. So Verizon offers several excuses – sometimes an explanation, sometimes “new” data, or even an alternate theory – to explain away its sub-par performance. And herein lies the Commission’s choice – it can permit Verizon to avoid being measured by the same DSL performance standards that the Commission put in place in the last application it reviewed, or it can require Verizon to be bound by the Commission’s precedent.

Covad submits that the Commission risks “lowering the bar” on DSL performance so low that competitive LECs like Covad, carriers that rely on the 271 process as the most effective incentive for BOCs to comply with their obligations under the Act, may suffer irreparable harm across the country. Lowering the bar in this decision means lowering the bar not just for Verizon in Massachusetts, but for every other BOC in every other state yet to receive section 271 authorization. This is the simple choice the Commission faces.

With respect to the core of the unbundled network element (UNE) rules – unbundled local loops, linesharing and OSS – Covad is uniquely situated to provide concrete evidence of Verizon’s failure to comply with those rules in Massachusetts. DSL is a broadband data service that offers consumers high speed connectivity over existing copper loops. To offer service to its customers, Covad leases unbundled loops from Verizon and other incumbent LECs. In order to do so, Covad must utilize Verizon’s operations support systems (OSS) to interface with Verizon’s legacy network to obtain information about loops and place loop orders. DSL loop provisioning gives the Commission vital insight into loop checklist compliance. Hot cut loops require central office work, UNE-P loops are mere software changes, but DSL loops require the full panoply of provisioning activities, including field work, that gives the necessary insight into Verizon’s loop practices.

As discussed in greater detail below, Verizon’s OSS and loop provisioning in Massachusetts are not in compliance with the requirements of the Act. Indeed, even Verizon’s reliance on KPMG’s testing in Massachusetts to demonstrate compliance with the loop unbundling requirements of the Act is misleading: KPMG simply *did not test* all aspects of the DSL loop provisioning process. As such, the KPMG test results do not reflect many of the processes and procedures required by Verizon for DSL loops ordered in Massachusetts. Even more crucial, Verizon decided to file its application before linesharing metrics were in place, so the Commission has no reliable measure of Verizon’s linesharing performance. Indeed, as discussed in greater detail below, Verizon is not yet in compliance with the Commission’s linesharing order, over four months after the June 6, 2000 implementation date.

The significance of Verizon's failure to wait for comprehensive DSL loop, linesharing and OSS performance data before seeking long distance relief is two-fold. First, its performance looks significantly better than if it had included data on all aspects of its checklist obligations, not just the selected procedures on which it chose to focus. Second, Verizon will likely argue that Covad raises a meaningless detail – because DSL makes up a “small” percentage of the competitive LEC business in Massachusetts. But Verizon ignores the plain requirements of the 1996 Act, and the Commission's 271 precedent: section 251(c)(3) obligates Verizon to provide nondiscriminatory loop access “to any requesting carrier for the provision of a telecommunications service.”<sup>1</sup> Voice telephone service and DSL service are both telecommunications services, and Verizon's failure to provide nondiscriminatory access to loops and OSS for a requesting DSL provider, regardless of what Verizon gives to voice providers, means quite simply that Verizon is not in compliance with the Act.

## **II. Loops – Legal Standard**

Section 271(c)(2)(B)(iv) of the Act requires a BOC section 271 applicant to provide or generally offer access to “[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services.”<sup>2</sup> The Commission defines the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises.<sup>3</sup> This definition includes different types of loops, including “two-

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<sup>1</sup> 47 U.S.C. § 251(c)(3).

<sup>2</sup> 47 U.S.C. § 271(c)(2)(B)(iv).

<sup>3</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase “network interconnection device” with “demarcation point,” and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.”<sup>4</sup> The BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.<sup>5</sup>

To satisfy the nondiscrimination requirement of checklist item (iv), a BOC must demonstrate that it can efficiently furnish unbundled loops to competing carriers within a reasonable timeframe, with a minimum level of service disruption, and at the same level of service quality.<sup>6</sup> Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality service promptly to new customers without constructing new loops to each customer's home or business.

As the Commission concluded in the *Second BellSouth Louisiana 271 Order*, a BOC must make two showings in order to satisfy the loops checklist item. First the BOC must demonstrate that it has a legal obligation to provide unbundled local loops pursuant to terms and conditions that are consistent with the FCC’s rules.<sup>7</sup> BOCs have traditionally satisfied this requirement through introduction of a Statement of Generally Available Terms and Conditions (SGAT) and interconnection agreements. Recognizing that committing to provide loops in conformity with Commission rules and actually providing those loops are two very different things, the Commission imposes a second requirement on 271 applicants: make a *prima facie* showing that the BOC actually offers

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<sup>4</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-167.

<sup>5</sup> *Verizon New York Order*, 15 FCC Rcd at 4095-96, para. 271; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20713, para. 187.

<sup>6</sup> 47 C.F.R. §§ 51.313(b), 51.311(b), *Local Competition First Report and Order*, 11 FCC Rcd at 15658-15661.

<sup>7</sup> *Second BellSouth Louisiana 271 Order* at ¶ 189.

unbundled local loops in a nondiscriminatory fashion.<sup>8</sup> Thus, for example, in the *Second BellSouth 271 Order*, the Commission found that while BellSouth had demonstrated that it had legally obligated itself to provide loops consistent with Commission rules, despite that obligation BellSouth did not in practice offer nondiscriminatory access to loops.<sup>9</sup>

The importance of this two-pronged proof requirement cannot be overemphasized. Absent this requirement in the instant matter, Verizon would be able to present its interconnection agreements to the Commission and claim full compliance with the Act. But it is Verizon's actual, on the ground implementation of these "commitments" where the true evidence of its failure to comply with the checklist is found.

The Commission requires Verizon to "demonstrate that it provides unbundled loops in a manner that offers an efficient competitor a meaningful opportunity to compete."<sup>10</sup> Verizon must satisfy the nondiscriminatory loop provisioning requirement by providing "performance data demonstrating that competitive LECs have nondiscriminatory access to unbundled loops."<sup>11</sup> If Verizon fails to provide such data, along with an explanation as to how that data is derived and calculated, then it fails to meet its burden of producing *prima facie* evidence of its checklist compliance.<sup>12</sup>

In the *Southwestern Bell Telephone Company Texas 271 Order (SWBT Texas 271 Order)*, the Commission further clarified the stringent burden of proof that BOCs must satisfy as to xDSL-capable loops. Most notably, the Commission's finding that SWBT was providing nondiscriminatory access to unbundled DSL-capable loops was based on

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<sup>8</sup> *Second BellSouth Louisiana 271 Order* at ¶ 189.

<sup>9</sup> *Second BellSouth Louisiana 271 Order* at ¶ 189.

<sup>10</sup> *Second BellSouth Louisiana 271 Order* at ¶ 198.

<sup>11</sup> *Second BellSouth Louisiana 271 Order* at ¶ 198.

the “comprehensive review of SWBT’s methods and procedures for offering xDSL-capable loops” conducted by the Texas Commission.<sup>13</sup> Without such a comprehensive review (which, as the Commission noted, took over a year), the state of DSL loop provisioning in Texas would not have supported competition. Indeed, as the Commission noted, the Texas Commission “ordered SWBT to implement substantial changes to its xDSL-capable loop ordering process.”<sup>14</sup> In addition, the Commission found that SWBT had made, at the Texas Commission’s behest, a series of commitments to implement xDSL-capable loop ordering process changes in order to secure the support of the Texas Commission for SWBT’s section 271 application.<sup>15</sup>

Massachusetts performance data demonstrates that Verizon is woefully out of parity.

In the *SWBT Texas 271 Order*, the Commission set out those wholesale metrics it would use to examine DSL loop performances: “the average completion interval, the percent of installation due dates missed as a result of the BOC’s provisioning error, the timeliness of order processing, the installation quality of xDSL loops provisioned, and the

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<sup>12</sup> *Second BellSouth Louisiana 271 Order* at ¶ 198.

<sup>13</sup> SWBT Texas 271 Order, FCC 00-238, CC Docket No. 00-65 (rel. June 30, 2000), at para. 289.

<sup>14</sup> *Id.*, citing Covad/Rhythms Arbitration Award 11-17, 34-36, 40, 42-52, 56-65, 78-80 (changes ordered by the Texas Commission include requiring SWBT to provide xDSL-capable loops on demand for xDSL services of the competing carrier’s own choosing; drop arbitrary length and transmission speed restrictions on competing carriers’ xDSL-capable loops; provide competing carriers equivalent access to the loop qualification information available to SWBT retail personnel; and eliminate its efforts to segregate and reserve the best loops for SWBT retail customers with its Selective Feeder System binder group management).

<sup>15</sup> *Id.*, citing Dec. 16 Open Meeting Tr. at 12-14, 16-17 (changes committed to include eliminating rejection of competing carrier xDSL-capable loop orders lacking information categorizing the request in one of seven SWBT Power Spectral Density masks; taking requests for loop qualification information via e-mail or fax; developing streamlined two-step ordering process for xDSL-capable loops; making available acceptance testing after provisioning; offering xDSL-capable loops “as is” to competing carriers who do not wish to have performed the conditioning SWBT recommends; offering loops of less than 12,000 feet without requiring competing carriers to go through the loop qualification process; and reaffirming commitment to eliminate the Selective Feeder System).

timeliness and quality of the BOC's xDSL maintenance and repair functions.”<sup>16</sup> Thus, the Commission concluded that by examining the timeliness of loop provisioning, the rate at which provisioned loops fail, and the timeliness of repair and maintenance activities, the Commission would have a sufficient picture of xDSL loop practices.

An examination of each of these performance metrics as reported by Verizon in Massachusetts reveals that Verizon is not only failing to provide parity performance in each and every one of those metrics<sup>17</sup>, but also that its performance is steadily worsening.<sup>18</sup> Not only does Verizon grossly fail to meet the baseline level of performance that the Commission approved in the *SWBT Texas 271 Order*, but it fails to provide competitive LECs a meaningful opportunity to compete in Massachusetts.

In the *SWBT Texas 271 Order*, the Commission compared SWBT's retail DSL performance directly to its wholesale loop performance. The Commission did so because the Texas Commission, commenting parties, and SWBT itself agreed to use such a

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<sup>16</sup> *SWBT Texas 271 Order* at para. 282, quoting *Bell Atlantic New York Order*, 15 FCC Rcd at 4123-24, para. 334.

<sup>17</sup> In July, for example, Verizon did better for itself than for competitive LECs for average interval offered – non-dispatch and dispatch (PR 1-10 and PR 1-02), average interval completed – dispatch (PR 2-02), % loops completed within 6 days (PR 3-10), Average delay days (PR 4-02), % missed appointment – dispatch (PR 4-04), % missed appointment – facilities (PR 5-01), % troubles within 30 days (PR 6-01). In fact, the only provisioning metric that Verizon purports to do better for competitors than it does for itself is on average interval complete – no dispatch (PR 2-01). The Commission should note that a very small percentage of Covad's orders are “no dispatch” orders, because Covad does not have linesharing available to it yet in Massachusetts (and certainly didn't in July when this metric was measured). In addition, Verizon is measuring its entire retail provisioning process for DSL service, whereas for competitors it is measuring only the central office cross connect work it performs. As a result, it is not surprising that Verizon's own retail interval is longer than its non-dispatch service to competitors.

<sup>18</sup> In May 2000, Verizon actually performed better for competitive DSL LECs than it did for itself in average interval offered (PR 1-01 and PR 1-02), average completed interval – dispatch (PR 2-02), and average delay days (PR 4-02). By June 2000, Verizon's performance was worsening, and it was no longer performing better for competitors in any of those categories. From June 2000 to July 2000, Verizon's performance worsened even more: average interval offered (PR 1-01 and 1-02), average interval completed – dispatch (PR 2-02), trouble reports within 30 days (PR 6-01) all were even further out of parity. Again, this is all Verizon's own data. As competitive LECs like Covad scale their businesses, Verizon's performance deteriorates. These metrics demonstrate clearly that Verizon's performance is on the decline, and that the incumbent LEC does not have the systems in place to handle commercial volumes of DSL loop orders.

comparison.<sup>19</sup> The same is true in the instant application, where Verizon agreed to use such a comparison in New York and export the same performance standards to Massachusetts. Although Covad has reason to dispute the use of a strict retail-to-wholesale comparison, for purposes of these comments Covad will abide by the Commission's determination that such a comparison is appropriate.<sup>20</sup> The Commission's three categories of xDSL loop performance were captured, in the *SWBT Texas 271 Order*, by means of three performance metrics.

### **On-Time Loop Delivery**

The Commission concluded in the *SWBT Texas 271 Order* that SWBT provided nondiscriminatory access to xDSL loops because "it installs xDSL-capable loops for competing carriers in substantially the same time and manner that it installs xDSL-capable loops for its own retail service."<sup>21</sup> Where SWBT provided its retail customers service on-time approximately 93.5%, for example, the Commission found that competitive LEC customers received on-time loop performance approximately 92.3% of the time.<sup>22</sup>

Verizon provides performance reporting, pursuant to PR 3-10, on its on-time loop delivery data. PR 3-10 measures the percentage of time that Verizon meets the 6-day

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<sup>19</sup> *SWBT Texas 271 Order* at para. 296.

<sup>20</sup> The time to coordinate the order with an ISP, or to arrange and perform a "truck roll" for customer installation or inside wiring will add days to the ILEC's "retail ADSL" installation interval. CLECs like Covad have to undertake those steps as well. For example, assume that for its retail ADSL service, the ILEC performs the central office cross-connect the first business day after it receives an ADSL order (this is generally all the work that is required to provide line-sharing to a CLEC). The ILEC may then take five business days to arrange a truck roll to perform inside wiring or other work at the customer premises. Under the "parity" standard argued for by ILECs, that additional week will be added to its "installation interval". As a result, the ILEC will be excused from providing line-shared loops to a CLEC within six business days—and the CLEC still has to coordinate installation and possibly a truck roll. In this sense, the "parity" standard advocated by ILECs would, in reality, *codify and permit* overtly discriminatory provisioning.

<sup>21</sup> *SWBT Texas 271 Order* at para. 295.

<sup>22</sup> *SWBT Texas 271 Order* at para. 297.

standard xDSL loop provisioning interval in Massachusetts, both for itself and for its wholesale customers. The most recent data available, July of 2000, demonstrates that Verizon's performance in Massachusetts is grossly out of parity.<sup>23</sup> At the same time that Verizon provides on-time loops to its retail customers 83% of the time, Verizon provides on-time loops to its competitors only 51% of the time.<sup>24</sup>

### Verizon Excuse

Because the performance data that the Commission relied on in approving SWBT's Texas 271 application is so poor, Verizon must come up with an excuse in an attempt to bolster its application. Here's what Verizon has come up with: competitive LECs are using "manual loop qualification."<sup>25</sup> By using manual loop qualification, competitive LECs add three days to the loop provisioning interval. Verizon thus undertakes its own examination of the completed interval<sup>26</sup>, and concludes (surprisingly) that "it is clear that CLECs are getting service when they want it."<sup>27</sup>

The Commission determined in the *SWBT Texas 271 Order* that on-time loop performance is an important indicator of checklist compliance. Pursuant to the Commission's prior section 271 holdings, Covad, other competitive LECs, Verizon, and the New York PSC worked collaboratively to adopt a performance metric, PR-3-10, that

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<sup>23</sup> Even Verizon's "strike-affected data" for August shows that it continues to devote available resources to itself before competitors, installing loops on time 63% of the time for itself, and only 40% on time for competitive LECs.

<sup>24</sup> There is no data on this metric for prior months, because July is the first month that Verizon agreed to report on this important gauge of provisioning timeliness. Verizon may not even be telling the whole story with its performance. Verizon notes that it "observed" 723 total competitive LEC loops in reporting its data for PR 3-10. This number cannot be the full number of competitive LEC loops provisioned in July, because Covad alone ordered more loops in that time period – and 723 is the total number of loops Verizon counted for *all* carriers. Where did the rest of the loops go? We have no idea, because Verizon refuses to provide disaggregated carrier-specific data, the Massachusetts DTE refuses to reconcile the data, and KPMG did absolutely no xDSL loop data verification.

<sup>25</sup> See Verizon Guerard/Canny Declaration at para. 78.

<sup>26</sup> See *id.* at 79 ("Verizon examined the pre-qualified loops separately from those that required manual loop qualification").

measures Verizon's on time performance. Verizon agreed to that measure, and now reports on it. That much went according to plan, until Verizon wanted to file a section 271 application for Massachusetts despite terrible loop performance in that state. Verizon was forced to come up with an excuse, and "manual loop qualification" is what it has come up with.

The problem with Verizon's excuse is that it takes the section 271 process well outside what the Commission had hoped it would be, reverting to the earlier days of poor applications. Despite the Commission's instructions, Verizon now takes the performance reporting process back from a collaborative one to a unilateral one. Verizon is unilaterally changing the performance metric rules by altering what they measure and what they report, "reporting" its performance by conducting its own study of "randomly selected "W" coded xDSL loop orders"<sup>28</sup> and then recalculating its loop performance based on its own new measurement process. Because Verizon has refused to follow the process established for the adoption of performance metrics – proposing modifications, working collaboratively with competitive LECs and the state commission, and awaiting the adoption of new metrics, it is difficult to see how the Commission can accept Verizon's maneuver.

In addition, because Verizon has refused to provide disaggregated loop data to Covad and other competitive LECs, it is impossible to effectively refute its "study." Covad as a matter of course uses Verizon's automated loop qualification tool, not the manual loop qualification tool, because the manual tool results in provisioning delays and an expensive charge for the manual process. Although Covad has not been able to study

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<sup>27</sup> *Id.* at para. 77.

<sup>28</sup> *Id.* at para. 79.

the specific orders Verizon's contends were manually qualified, Covad generally uses the manual loop qualification tool in less than 15% of its loop orders. Covad thus disputes Verizon's "random sample" finding that 50% of competitive LEC loop orders request manual loop qualification.<sup>29</sup> It is Covad's strong hope, however, that the Commission will recognize the numerous problems with accepting Verizon's unilateral alteration to established performance metrics, and its unverified unilaterally amassed "data."

But Verizon has another trick up its sleeve – it contends that competitive LECs actually code their orders incorrectly, marking on the LSR that the loop order is to be manually qualified, even when it is not. Thus, the order "falls out" for manual qualification even when it should not have, and Verizon contends that it is entitled to the nine day, rather than 6 day, provisioning interval. Covad has even less of an opportunity to dispute Verizon's excuse, because Covad has no idea which orders Verizon looked at to view the "checked boxes." Obviously, Covad has no incentive whatsoever to erroneously code its loop orders for manual loop qualification, because Covad will be charged for such orders when manual loop qualification was not needed, and Covad's loop orders will be delayed at least an extra three days. That said, it is difficult to respond to Verizon's contentions in the absence of any concrete record information provide by Verizon.

### **Loop Quality**

The second area of xDSL loop performance that the Commission examined in the *SWBT Texas 271 Order* is loop quality. The Commission found two important reasons why measurement of trouble tickets within 30 days is important for determining checklist compliance. First, trouble reports within 30 days are "indicative of the quality of network

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<sup>29</sup> *Id.*

components supplied by the incumbent LEC.”<sup>30</sup> Second, the Commission concluded that advanced services customers that experience substantial troubles in the period following installation of a xDSL-capable loop are unlikely to remain with a competing carrier.<sup>31</sup>

The Commission found SWBT’s loop quality performance in compliance with checklist item four. Specifically, the Commission found that trouble tickets submitted within 30 days were at a level of about 4% for both SWBT retail and wholesale.<sup>32</sup> In Massachusetts, Verizon does not provide such nondiscriminatory performance.

Competitive LEC customers, according to Verizon’s own data, suffer nearly three times as many loop outages as Verizon’s own retail customers. Specifically, Verizon reported July trouble tickets of 8.5% for competitors, and only 3% for its own retail customers.<sup>33</sup>

Verizon’s poor performance is indicative of, as the Commission has concluded, the level of satisfaction Covad’s customers will derive as a result of Verizon’s wholesale loop performance. As Verizon’s own data shows, Covad’s customers are almost three times as likely to be delivered a non-functioning loop from Verizon technicians than Verizon’s own retail customers. What does this mean in practice? Covad customers will find that their service doesn’t work on the day Covad promised it would, and those customers are likely to cancel service as a result. In addition, the high rate of trouble tickets suggests something even worse about Verizon’s performance. Trouble tickets submitted within 30 days to Verizon are a measure of loop quality, meaning that the

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<sup>30</sup> *SWBT Texas 271 Order* at para. 299.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at para. 300.

<sup>33</sup> PR 6-01. In June, Verizon also did about 3 times better for its own customers than for competitors (6.2% for competitors, versus only 2.3% for its own customers). August performance data just released shows that Verizon is, even in a resource-constrained strike period, still devoting available resources to itself, and the data shows Verizon’s performance for competitors is deteriorating. PR 6-01 for August shows that Verizon had only 2.11% troubles within 30 days for its own retail customers, compared with 7.56% for competitive LEC customers – more than 3 times better for itself.

loops that Verizon reports that it delivered on time actually were nonworking loops. Yet pursuant to the metric business rules, Verizon does not alter its on-time provisioning metric (PR 3-10), so it is permitted to count as “delivered on time” loops that in fact were not working loops when delivered.

### **Verizon Excuses**

As with loop timeliness, Verizon has excuses as to why the metric that it agreed to, told the New York and Massachusetts commissions that it would report on, and which now shows Verizon as greatly out of parity, is not an accurate measure of its performance. First, Verizon argues that competitive LECs are submitting trouble tickets on loops that work just fine, or on loops that don’t fit the particular type of service that a competitive LEC seeks to offer.

Covad has two responses. First, Verizon admits that at least 44% of the trouble tickets submitted by Covad to Verizon actually result in trouble found on the loop.<sup>34</sup> Simply put, at least 44% of the loops Verizon delivered to Covad were non-functioning loops. That is an incredibly large percentage of non-functioning loops, and the importance of that fact cannot be overstated. This large number of non-functioning loops is not captured in Verizon’s on-time performance metrics – meaning that Verizon’s on-time performance was significantly lower than the metric would suggest. Simply put, of the 51% of loops that PR 3-10 shows Verizon to have delivered on time, at least 8.5% of

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<sup>34</sup> Verizon Lacouture/Ruesterholz Aff. at para. 105.

those (PR 6-01) were subject to trouble tickets, and at least as to Covad's trouble tickets, at least 44% (Verizon's own statistic) of those loops simply didn't work.<sup>35</sup>

Second, Verizon is wrong to assert that Covad is submitting trouble tickets because the loops provisioned don't fit the particular technical parameters that Covad needs in a loop. Covad submits trouble tickets to Verizon because the loop Verizon provisioned to Covad simply does not work. The loop doesn't work for xDSL service, but it also wouldn't work for voice service. Covad pre-qualifies its loops through Verizon in order to ensure that the loops it orders will support the services Covad seeks to offer. If the loop ends up being a non-working loop, it is not because Covad is playing a game – it is because Verizon completely failed to deliver a working loop. As with Verizon's other "excuses," it provides no concrete, verifiable data to back it up, such as the actual trouble ticket numbers where Covad has submitted trouble tickets on loops that actually worked. Again, as with Verizon's other excuses, Covad is unable to refute Verizon's hypothetical and speculative arguments.

Second, Verizon contends that Covad is submitting trouble tickets on loops that Covad had agreed, in the "acceptance testing" process," were working loops.<sup>36</sup> Purporting to conduct its own analysis of trouble tickets submitted by a "major CLEC,"<sup>37</sup> Verizon's own study purports to reveal that 84% of the loops subject to trouble tickets were acceptance tested "good" by that competitive LEC. Covad, the major CLEC in question, is thus according to Verizon participating in loop acceptance testing, and then submitting trouble tickets on loops it accepted as working loops. Thus, Covad is to

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<sup>35</sup> This panoply of data demonstrates clearly why it is important that the Commission rely on established metrics, not explanations, and why it should require Verizon to solve all of these underlying process and system problems, not simply clean up its numbers by excuse after excuse.

<sup>36</sup> Verizon Lacouture/Ruesterholz Aff. at para. 105.

blame for the loop quality metrics that show Verizon performing almost three times better for itself than for competitors.

The idea that Covad would deliberately game the system by going through the time and expense of acceptance testing, and then submitting trouble reports to skew Verizon's metrics, is ludicrous. There is a very real and very serious problem with Verizon's loop practices, and acceptance testing is one of those problems. The Commission should recognize what the loop performance data – and Verizon's attempt to explain it away – really reflect. The processes and systems in Massachusetts are broken and in need of repair. The Commission requires performance data because it provides an insight into how Verizon performs in its statutory duty to provide wholesale services. Not only does the performance data itself show that those systems aren't working, but Verizon's "explanation" shows the same thing. If acceptance testing is indeed failing to reveal loops that may not be working, there is something wrong with the acceptance testing process. If, as Verizon contends, Covad is accepting loops that don't work, then the acceptance testing process doesn't work either. The Commission should, in rejecting Verizon's application, instruct Verizon to fix the acceptance testing process to a point where all parties can agree that it works.

Verizon initially agreed to acceptance testing only after the New York PSC instructed it to do so, as a means of improving upon its poor loop provisioning in New York. Acceptance testing is a collaborative process, but there is much more collaboration necessary to make it a truly workable process. Both Verizon and Covad will benefit from a functional acceptance testing process, because it will reduce costs from failed truck

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<sup>37</sup> *Id.* Verizon informed the Massachusetts DTE during oral testimony that Covad is the "major" CLEC in question. Color us flattered.

rolls on both sides, from multiple dispatches, and from customer complaints. There are specific fixes that Verizon needs to make. For example, Covad has no way of knowing where on the loop the Verizon technician is plugging in test equipment during the acceptance testing process. If the loop is not tested at the network interface device (NID), the entire loop has not been tested, and may be faulty because of the incomplete acceptance test. This, and numerous other acceptance testing issues, must be addressed by Verizon and its competitors. Above all, the Commission cannot ignore Verizon's own statement that 84% of Covad's repair requests are on loops that were acceptance tested as good.<sup>38</sup> The very fact that Verizon would make that factual assertion, regardless of its accuracy, suggests that acceptance testing in Massachusetts is not working. The Commission must take concrete steps to ensure that Verizon has the incentive to fix the problem.

#### **V. Loop Maintenance and Repair**

The third area of xDSL loop performance that the Commission examined in the *SWBT Texas 271 Order* was maintenance and repair. In concluding that SWBT's performance in repair and maintenance of xDSL loops was sufficient to meet checklist item 4, the Commission noted that, for example, SWBT in one month took 24.8 hours to repair outages for its own customers, but repaired competitors' customer outages within an average of 3.22 hours.<sup>39</sup> Thus, SWBT repaired competitor customer outages nearly 8 times faster than its own.

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<sup>38</sup> *Id.*

<sup>39</sup> *SWBT Texas 271 Order* at para. 304 n. 846.

Verizon, by contrast, is significantly out of parity in this measure as well.<sup>40</sup> Indeed, Verizon's own reported data, MR 4-01, demonstrates that in July, competitive LEC customers waited nearly an *entire day longer* to have their service restored than Verizon's own customers were forced to wait.<sup>41</sup> This is hardly the performance that the Commission found was checklist compliant in the *SWBT Texas 271 Order*, where SWBT did *eight times* better for competitors than it did for itself. The significance of this measure, of course, is that Covad's customers who suffer service outages as a result of Verizon's loop plant are out of service twice as long as Verizon's own DSL customers. This creates a real risk that Covad customers will cancel service and sign up instead with Verizon, which can promise an outage response time that is nearly twice as fast.

## **VI. Verizon Excuse**

Once again, Verizon has an excuse for why its maintenance and repair activities take so much longer for competitive LEC customers than for Verizon's own customers. Here, the excuse is "no access." Verizon contends that 59% of competitive LEC loop repair requests result in Verizon being provided with "only limited access to the end user."<sup>42</sup> At the same time, Verizon faced no access issues for its own customers only 3% of the time.<sup>43</sup> The issue of Verizon's unilateral alteration of the data is present here as it is in the prior metrics that Verizon attempts to explain away. Verizon's 59% no-access

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<sup>40</sup> Indeed, from May through July 2000, Verizon's own performance data shows that it performs better for itself than for competitive LECs in DSL maintenance and repair for 10 out of 11 metrics. This bears repeating: for 10 out of the 11 DSL repair and maintenance metrics, Verizon performs better for its own retail operation than for competitors in May 2000, June 2000, and July 2000. (The only metric that Verizon performs as well for itself as for competitors is MR 5-01, repeat trouble tickets.) The Commission must recognize the demonstrable harm that competitors are suffering as in Massachusetts as its customers have more problems with their loops than Verizon retail and they wait longer for repair. Covad's customers will not stand for such service, and will likely switch to Verizon, where as retail customers of the incumbent they will be eligible for much better treatment.

<sup>41</sup> MR 4-01 shows Verizon retail customers wait 25 hours for service restoration, versus 45 hours for competitive LEC customers.

<sup>42</sup> Verizon Lacouture/Ruesterholz Declaration at para. 106.

<sup>43</sup> *Id.*

assertion is not captured by a state commission-approved performance metric, it has not been verified by KPMG, and Verizon has not made information available to Covad to permit verification of data. This purported disparity is perhaps most interesting for what it shows conclusively – Verizon concedes that no access problems are a huge problem for competitors, and not for Verizon itself. The question, then, is what should the Commission do about it. Should it throw up its hands and leave it to Covad to resolve, presuming that no-access issues are entirely Covad's fault? In fact, no-access issues cry out for a collaborative solution, and Verizon will only have the incentive to work collaboratively to fix the problem if the Commission makes clear that such action is necessary for section 271 approval.

The no-access issue is an excellent example of an area where the Commission can take immediate action to promote competition and assist Verizon in presenting a successful section 271 application. Both Verizon and Covad agree that no-access issues are a barrier to successful loop provisioning. The parties disagree as to who is at fault, but clearly agree that collaboration is necessary to resolve those no-access issues. Because Verizon contends that 59% of its attempts to deliver service to competitive LEC customers are met with some kind of no-access issue, the Commission must recognize that there is a serious problem, regardless of whether metrics properly exclude no access from measurement. The issue is not the numbers – it is clear that the underlying system is broken and something needs to be done to fix it.

What should the Commission do? It should reject this application and require Verizon – and subsequent applicants – to fix the no-access problem. For example, Verizon refuses to give Covad customers an appointment window of any less than the

entire day. When Verizon retail customers schedule a service appointment, they can request a “window” of just a few hours, ensuring that they will know precisely when Verizon technicians will appear. Covad customers, on the other hand, are told only what date they can expect Verizon to show up. With an “all day” window, a Covad customer who leaves home for even a few minutes risks missing Verizon’s technician – who will code the appointment a no access and leave immediately. Verizon should be required to provide nondiscriminatory appointment windows, a parity of treatment that Covad has sought unsuccessfully from Verizon as a no-access solution.

**“Strike affected” August Data is In, and the News for Competitors is Terrible**

On Friday, October 13, 2000, Verizon finally made available to the Massachusetts DTE the C2C performance metric data for August. Beginning on August 5, 2000, Verizon union employees were on strike for a period of slightly less than three weeks. Covad was extremely concerned that during the pendency of the strike, and in the recovery period thereafter, Verizon would devote more resources to its retail provisioning and repair and maintenance activities than to its wholesale obligations. Verizon promised both the FCC and Covad that August would be a parity month – that is, that Verizon would distribute available resources so as to ensure parity performance for both its retail side of the house and its wholesale operations.

The August data provided for Verizon paints a stark and telling picture of the validity of those promises. In August, Verizon’s performance for itself was vastly superior than the performance it gave to competitors, demonstrating not only that Verizon’s overall performance continues to deteriorate (which Verizon will no doubt contend was due to the strike), but more importantly that Verizon continues to devote available resources to its own retail operations at the expense of its wholesale obligations.

Let's look at the numbers. PR 3-10, the on-time loop provisioning metric, demonstrated that Verizon provided on-time service to itself 63% of the time, whereas in only managed on-time performance for competitive LECs 40% of the time. Hardly the "parity of non-performance" that Verizon committed to provide. And that's not all – with one exception,<sup>44</sup> Verizon did better for itself than for competitors in every single category in the reported DSL provisioning data. The data speaks volumes of the treatment that Verizon gave its competitors in August.<sup>45</sup> More importantly, the data demonstrates conclusively that Verizon does not have the systems and procedures in place to provide nondiscriminatory treatment to its competitors.

Verizon and the Massachusetts DTE have Failed, or Refused, to Follow the Commission's Prior Rulings and Provide Competitive LECs a Full and Fair Opportunity to Resolve Performance Issues.

In the *SWBT Texas 271 Order*, the Commission set out a concrete and specific roadmap for BOC applicants to follow. Specifically, the Commission concluded:

we emphasize our strong preference for a record that contains data measuring a BOC's performance pursuant to state-adopted standards that were developed with input from the relevant carriers and that include clearly-defined guidelines and methodology . . . Accordingly, we encourage state commissions to adopt specific xDSL loop performance standards measuring, for instance, the average completion interval, the percent of installation due dates missed as a result of the BOC's provisioning error, the timeliness of order processing, the installation quality of xDSL loops provisioned, and the timeliness and quality of the BOC's xDSL maintenance and repair functions.<sup>46</sup>

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<sup>44</sup> PR 2-01, non-dispatch completion interval, which as noted above is irrelevant for Covad's loop orders, which require a dispatch. (As of August, Covad still had no line sharing order provisioned by Verizon).

<sup>45</sup> The Commission should ensure that Verizon's August performance data is reviewed in detail by the Enforcement Bureau. Verizon's own data conclusively demonstrates that the strike commitments it made to the FCC were not followed.

<sup>46</sup> *SWBT Texas 271 Order* at para. 282, *quoting Bell Atlantic New York Order*, 15 FCC Rcd at 4123-24, para. 334.

In order to prove that it was providing nondiscriminatory access to loops in compliance with checklist item 4, SWBT submitted data in the form of performance metrics. Those metrics were not simply SWBT's own version of loop performance; rather, the metrics were subject to numerous "checks" that led the Commission to accept their validity. In particular, the Commission highlighted the fact that, in the Texas state 271 proceedings, the "staff of the Texas Commission, SWBT, and competing carriers worked collaboratively to identify and resolve a number of key issues related to SWBT's compliance with section 271, including the operational readiness of SWBT's OSS, and the development of a performance monitoring and enforcement mechanisms."<sup>47</sup> The Commission stated that not only had data submitted by SWBT in the Texas 271 proceeding been "subject to substantial scrutiny and review by interested parties," including competitive LECs, KPMG, and the Texas Commission.<sup>48</sup>

In the SWBT Texas 271 Order, the Commission afforded the "Texas Commission's verification of SWBT's compliance substantial weight based on the totality of its efforts and the extent of expertise it has developed on section 271 issues."<sup>49</sup> Unfortunately, the process in Massachusetts did not proceed in as comforting a manner. Not only did the Massachusetts DTE refuse to involve itself in the factual disputes on the record, but the DTE ignored Covad's complaint that KPMG had not performed any xDSL data reconciliation. Thus, unlike Texas, where the state Commission, the third party tester, and individual competitive LECs were given an opportunity to reconcile performance data, the Commission has none of those protections for Massachusetts. Neither KPMG nor the DTE undertook to ensure that Verizon's performance was as it

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<sup>47</sup> SWBT Texas 271 Order at para. 13.

<sup>48</sup> SWBT Texas 271 Order at para. 254.

said. Moreover, Verizon has repeatedly and consistently refused to provide disaggregated performance data to Covad for reconciliation and process improvement.<sup>50</sup> Therefore, to the extent that commenting parties like Covad object to the “excuses” Verizon offers to distract from its poor performance, Covad never had the opportunity – either through collaborative discussion with Verizon, third party testing, or before the DTE – to have those objections properly evaluated.

### **Remote Terminal Issues**

In the *UNE Remand Order*, the Commission ordered incumbent LECs to provide competitors access to subloop network elements at any technically feasible point. Specifically, the Commission defined subloops as “portions of the loop that can be accessed at terminals in the incumbent’s outside plant.”<sup>51</sup> Thus Verizon is required to provide access to subloop elements – including, but not limited to, copper and/or fiber distribution and/or feeder plant. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses integrated digital loop carrier (IDLC) technology<sup>52</sup> or similar remote concentration devices for the particular loops sought by the competitor. In sum, Verizon is obligated to provide – pursuant to TELRIC

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<sup>49</sup> SWBT Texas 271 Order at para. 4.

<sup>50</sup> Such a refusal is remarkable on several fronts. First, Verizon provides such data pursuant to the DSL Collaborative operated under the auspice of the New York PSC, but has refused to do so in Massachusetts. This is but one example of Verizon’s efforts to force competitive LECs to litigate such issues in each and every state, despite its facial compliance with the “what happens in New York, happens throughout its territory” regulatory public relations gambit. Second, if Verizon were actually interested in improving its performance in Massachusetts, it would reconcile its performance data with its wholesale customers, if only to ensure that both supplier and customer are making all the process improvements they can to ensure a viable wholesale relationship. Third, Verizon can be presumed to have read the SWBT Texas 271 Order, including its strong suggestion that 271 applicants reconcile their purported performance with competitors, the state commission, and the third party tester. Because such reconciliation and collaborative would have supported its application, Verizon must have had a reason not to cooperate in such an endeavor. Perhaps its purported performance would not have withstood such scrutiny.

<sup>51</sup> *UNE Remand Order* at para. 206.

<sup>52</sup> IDLC technology permits a carrier to multiplex and demultiplex loop traffic at a remote concentration point and to deliver that combined traffic directly to the switch without first separating the individual loops.

rates and UNE terms and conditions – access to subloop elements at any technically feasible point.

Verizon has yet to legally obligate itself to provide unbundled access to the full panoply of loops and loop functionalities. As detailed by Covad and Rhythms in their joint filing before the Massachusetts DTE, Verizon’s tariff does not address the Commission’s *UNE Remand* requirements. The Commission should examine Verizon’s tariff and in rejecting this application, should provide concrete guidance to Verizon as to the legal obligations it must undertake before it can present a successful application.

In the *UNE Remand Order*, the FCC ordered incumbent LECs to provide competitors access to subloop network elements at any technically feasible point. The FCC did not limit subloops to any particular part of the loop, but applied an expansive definition of the subloop to include “any portion of the loop.”<sup>53</sup> The FCC intentionally applied a “broad definition of the subloop” to allow “requesting carriers maximum flexibility to interconnect their own facilities” at technically feasible points to “best promote the goals of the Act.”<sup>54</sup> Any limitation of the subloop to a particular portion of the loop would be at odds with this purpose. Thus BA-MA is required to provide access to subloop elements – including, but not limited to, copper and/or fiber distribution and/or feeder plant.

Verizon must provide competitors with access to unbundled loops regardless of whether it uses integrated digital loop carrier (IDLC) technology<sup>55</sup> or similar remote

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*Local Competition First Report and Order*, 11 FCC Rcd at 15692, para. 383; *UNE Remand Order*, 15 FCC Rcd at 3793, para. 217.

<sup>53</sup> *UNE Remand Order* at ¶ 207.

<sup>54</sup> *UNE Remand Order* at ¶ 207.

<sup>55</sup> IDLC technology permits a carrier to multiplex and de-multiplex loop traffic at a remote concentration point and to deliver that combined traffic directly to the switch without first separating the individual loops. *Local Competition First Report and Order* at ¶ 383; *UNE Remand Order* at ¶ 217.

concentration devices for the particular loops sought by the competitor. In sum, Verizon is obligated to provide – pursuant to TELRIC rates and UNE terms and conditions – access to subloop elements at any technically feasible point.

Verizon claims to have satisfied this requirement through its Unbundled Sub-Loop Arrangements (“USLA”) May 25<sup>th</sup> tariff filing. The Massachusetts DTE currently is conducting a limited investigation into this offering.<sup>56</sup> A more thorough examination of this offering must be done to ensure that competitors have full access to unbundled subloop, as defined by the Commission. The current construct significantly hampers the ability of carriers to provision a variety of advanced services to a growing percentage of Massachusetts consumers.

For example, Verizon has tariffed an overly restrictive definition of subloops in Massachusetts that contravenes the FCC’s rules.<sup>57</sup> Verizon’s offering unilaterally limits the subloop UNE to only the “metallic distribution pairs/facilities” at the Verizon FDI.<sup>58</sup> There is nothing in the FCC’s *UNE Remand Order* that limits the subloop to only the copper distribution portion of the loop. In fact, there is simply no basis whatsoever for Verizon restricting subloops to just the distribution portion of the loop. Moreover, Verizon’s qualification that subloops only include those pairs “at the BA-MA FDI” is at odds with the FCC’s specific findings that CLECs may access subloop at any number of technically feasible points, including NIDs, MDFs, MPOIs, RTs, SPOIs and FDIs.<sup>59</sup> Thus, Verizon’s subloop definition is inconsistent with the *UNE Remand Order*’s clear

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<sup>56</sup> D.T.E. Docket 98-57.

<sup>57</sup> D.T.E. Docket No. 98-57.

<sup>58</sup> Tariff 17, Part B, Section 18.1.1.A.

<sup>59</sup> 47 CFR § 51.319(a)(2).

definition of subloop and should be revised prior to the Commission's approving Verizon's 271 application.

### Line Sharing

On November 19, 1999, the Commission adopted an order requiring incumbent LECs to provide unbundled access, pursuant to section 251(c)(3) of the Act, to the high frequency portion of the loop.<sup>60</sup> The *Line Sharing Order* required incumbent LECs to be operationally ready (actually offering competitors the ability to order and provision line sharing service) to offer the line sharing UNE by June 6, 2000 – six months after the adoption of the Order.<sup>61</sup>

In the *SWBT Texas 271 Order*, the FCC made clear that because SWBT filed its application before the final implementation date of the *Line Sharing Order*, SWBT did not have to demonstrate its compliance with that Order.<sup>62</sup> Because Verizon is submitting the instant application well after both the effective date of the *Line Sharing Order* and the implementation date of that Order, Verizon must prove its full compliance with the Commission's line sharing UNE requirements.

Verizon's line sharing performance has been miserable. Verizon missed the Commission's June 6, 2000 deadline to make line sharing available. Amazingly, Verizon had finished installing splitters in only 70% of the requested central offices on the date that it filed its application.<sup>63</sup> Although Verizon committed to completing this work by July 6, 2000 and then by August 5, 2000, it failed to meet these deadlines by a wide margin. As detailed below, Verizon has only itself to blame for its unacceptable line

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<sup>60</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, and Fourth Report and Order, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

<sup>61</sup> *SWBT Texas 271 Order* at para. 322.

<sup>62</sup> *SWBT Texas 271 Order* at para. 33.

sharing performance, which has rendered Covad unable to process line sharing orders in Massachusetts.

**Verizon's Incompetent Performance in Installing Covad's Splitters Has Delayed the Implementation of Line Sharing in Massachusetts**

Covad plans to offer ADSL over line shared loops in Massachusetts by collocating its splitters<sup>64</sup> in common space in Verizon's central offices. Under this arrangement, Verizon had the task of installing and maintaining the splitters. Although Verizon was supposed to have completed the installation of Covad's splitters by July 6, 2000, Verizon did not finish installing the splitters until October 10, 2000 and, even then, there is no telling if Verizon installed the last wave of splitters properly because Covad has not yet had time to conduct its inspection of the work. As set out in detail below, Covad cannot offer line shared DSL services in Massachusetts until all of its splitters are installed.

Verizon's Excuse

Verizon claims that the splitter installation delays are Covad's fault because Covad failed to provide splitters in a timely manner. Specifically, Verizon alleges that Covad should have provided splitters on May 27, June 1, and June 8 of this year and that Covad did not actually provide any splitters until the first week of July.<sup>65</sup>

At the outset, Covad had all of the splitters necessary for Massachusetts stored in a New Jersey warehouse awaiting the call from Verizon. Covad does not simply ship telecommunications equipment to other carriers until it is requested to do so and it has

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<sup>63</sup> Lacouture/Ruesterholz Declaration at 127.

<sup>64</sup> To engage in line sharing, DSL providers use a splitter to separate the high frequency data channel on a loop from the low frequency voice channel. The splitter directs the data channel to the DSLAM of a DSL provider at the same time that it sends the voice channel to the incumbent's switch.

<sup>65</sup> Lacouture/Ruesterholz Declaration at 128.

shipping destination information. Verizon did not request that Covad ship the splitters on the scheduled dates that Verizon reports. Instead, Covad personnel had to approach Verizon and request that Verizon call for the splitters and provide shipping information.<sup>66</sup> This backwards process resulted in the splitters not being shipped until the first week of July.

Second, according to Verizon's own schedule, it needed 29 business days (between May 27, 2000 and July 6, 2000) to complete the installation of splitters.<sup>67</sup> Yet, Verizon admits that it had the splitters during the first week in July. Clearly, Verizon should have completed installing the splitters long before mid-October. Verizon did not need to have the splitters in its possession to complete the bulk of the installation work. For example, splitter installation involves (1) placing ironwork and relay racks to hold the splitters and the associated cabling; (2) installing cabling from the main distribution frame ("MDF") to the relay racks; (3) putting a block on the MDF along with appropriate wiring to serve the splitter; and (4) bolting the splitter into the relay rack with four screws and attaching the cabling to the back of the splitter with a standard connector (which is no more difficult than plugging a printer cord into a computer). Verizon could have performed steps 1, 2, and 3 long before the splitters arrived – but it made feeble attempts in this regard – and, after the splitters arrived, could have completed step 4 in less than one hour per splitter. Verizon's excuses ring hollow: Verizon caused the splitter installation delays in Massachusetts.

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<sup>66</sup> Verizon had Covad ship the splitters to several warehouses in Massachusetts and New Hampshire. Without shipping information for these warehouses, Covad would not have known where to send the splitters.

<sup>67</sup> Lacouture/Ruesterholz Declaration at para. 128.

In sum, the Commission should realize that Verizon could have completed the splitter installation process long ago, and there very well might have been line sharing orders by now on which the Commission could judge Verizon's performance.

**Full Implementation of Line Sharing Requires More than Just Having Verizon Complete the Wiring of Splitters in Its Central Offices**

It is a misconception that Covad can begin offering line shared DSL services in a central office as soon as Verizon completes the splitter installation there. In reality, Covad cannot offer DSL over line sharing in a state until all of the central offices in that market are splitter-equipped. The reason is that Covad sells its services through Internet service providers ("ISPs") who lack the ability to differentiate between customers in splitter-equipped central offices and those in non-equipped offices. This point is crucial. Since only the ISP actually talks to the end user, it must be able to explain to the end user how the requested service will work. However, if the ISP does not know whether the service will be line shared or offered over a stand-alone loop,<sup>68</sup> it can confuse the end user and even accidentally sign up customers who are ineligible to receive DSL service (such as those with only one telephone line running to their premises and who are served by a central office not yet equipped for line sharing).<sup>69</sup> Covad would risk its goodwill with both ISPs and end users to start offering line shared services in only part of a market. Therefore, even though Verizon had completed installing splitters in a substantial number of central offices when it filed its Section 271 application in Massachusetts, Covad could not move forward with line sharing.

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<sup>68</sup> Once line sharing is implemented in a market, ISPs know that all ADSL services will be defaulted to line shared loops and only more powerful services, such as SDSL, will use stand-alone loops.

<sup>69</sup> There are distinct differences between DSL services provided over stand-alone loops and line shared loops. Most obviously, for a customer to use DSL provided over a stand-alone loop, the customer must

Verizon allegedly finished installing Covad's splitters in Massachusetts last week. Whether or not that is true remains to be seen from Covad's end-of-job "walk-throughs," which in New York have revealed deficiencies in the quality and functionality of the workmanship. At any rate, Covad cannot immediately begin offering line sharing in Massachusetts just because (assuming for the sake of argument) Verizon has completed the splitter installations. Besides performing the walk-throughs, Covad must verify the accuracy of the carrier facility assignment ("CFA") information provided by Verizon for each splitter. If there are discrepancies in the CFA information for a given splitter, any line sharing orders placed to the splitter will be unsuccessful. The verification and reconciliation process can take up to a week or more to complete.

In short, the Commission should not deem Verizon to have made line sharing available until it completes the installation of splitters in all requested Massachusetts central offices and Covad has a fair opportunity to begin offering line sharing services.

**Even in New York, Where Verizon Finished Installing Splitters Last Month, Covad Is Experiencing Significant Problems Processing Line Sharing Orders**

Lacking data for Massachusetts, Verizon focuses on its performance in New York.<sup>70</sup> Yet, Covad has experienced significant problems placing line sharing orders in New York. Perhaps, the most common of these has been the inability of Verizon's pre-ordering systems to identify in advance orders placed by customers who do not have Verizon dialtone. These customers tend to receive dialtone either from resellers or UNE-P providers. Because Verizon has not provided an appropriate means of identifying these non-qualifying orders, Covad has had significant percentage of its orders rejected by

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have a spare loop running to his or her premises. In addition, line shared services require the placement of filters on the telephone line, unlike DSL services offered over a stand-alone loop.

Verizon. The Commission should require Verizon to make available as soon as possible a pre-order mechanism for identifying such customers before, rather than after, they place an order for line shared DSL.

**Verizon Will Not Have Adequate OSSs to Process Line Sharing Orders Until April of 2000**

Verizon lacks the OSSs to process line sharing orders in the same manner as orders for other unbundled network elements. That is, although Verizon can receive line sharing orders over mechanized OSS interfaces, such as the GUI or EDI, it cannot flow these through to its back office systems in any respect. Instead, Verizon has its personnel manually enter line sharing orders into its inventory and billing systems. This process is not scalable.

In the *Line Sharing Order*, the Commission required Verizon to deploy appropriate OSS for line sharing by June 6, 2000.<sup>71</sup> Verizon failed to do so. Covad pressed Verizon to increase its efforts to deploy OSS for line sharing, and Verizon forced Covad to litigate the issue. After a lengthy arbitration case, the DTE ordered Verizon to such an OSS available on April 1, 2000.<sup>72</sup> In any event, Verizon is currently in violation of the *Line Sharing Order* for its failure to deploy OSS for line sharing at any time since June 6, 2000.

KPMG Testing

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<sup>70</sup> Lacouture/Ruesterholz Declaration at 136.

<sup>71</sup> *Linesharing Order* at para. 130.

<sup>72</sup> Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000, D.T.E. 98-57 (Phase III), at 25 (September 29, 2000). The DTE provided an exception to this ruling in which Verizon can get more time if Verizon Pennsylvania Inc. is given an extension of the deadline to deploy OSS line sharing in that state. *See id.*

When Verizon's predecessor corporation, then known as Bell Atlantic – New York (“BA-NY”), applied for and received Section 271 approval, it presented the testing results of KPMG for most network elements and services, except those related to xDSL. As noted earlier, the Commission chose to rely on BA-NY's overall loop performance, instead of focusing on xDSL performance separately, but stated that future applicants would have to make an independent showing of satisfactory xDSL performance. In light of that conclusion, the Commission anticipated that future applicants would undergo rigorous testing of their xDSL performance by KPMG or other testing groups. Yet, nothing of the sort happened in Massachusetts.

KPMG Did Not Verify the Performance Metrics Data Upon Which Verizon Relies

As discussed above, Verizon has presented certain metrics data (based upon the metrics developed in New York) about its performance in providing 2-wire xDSL loops. While that data shows Verizon's performance to be poor, there is no telling whether Verizon faithfully adhered to the definitions of the metrics in gathering and processing that data. As the Commission stated with regard to Bell Atlantic – New York's Section 271 application, the applicant must demonstrate acceptable performance “through the use of state or third-party *verified* performance data.”<sup>73</sup>

Although it verified some of Verizon's performance data, KPMG did not verify any of Verizon's xDSL data. Apparently, KPMG validated data for metrics that were available in December of 1999 and January and February of 2000.<sup>74</sup> Because there was no xDSL data available during those months, KPMG made no attempt to verify any of

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<sup>73</sup> New York Order at para. 335 (emphasis added).

<sup>74</sup> Tr. 3387-89 (Sears).

the subsequent xDSL data that Verizon released shortly thereafter.<sup>75</sup> Importantly, the DTE staff also did not make any effort to verify Verizon's xDSL performance data. Therefore, the only such data that the Commission has before it is entirely unverified and may mask even worse performance than the data already shows.

KPMG's Testing of Verizon's Ability to Deliver xDSL Loops Was Flawed

The extent of KPMG's alleged testing of Verizon's xDSL performance consisted of observing Verizon technicians at the customer premises during the installation process for 45 xDSL loops. There are numerous flaws in this methodology.

To begin with, KPMG "sent [its] observers out with Bell Atlantic technicians during the installation of the ADSL orders."<sup>76</sup> It is hardly surprising that Verizon's technicians, knowing they were being observed for purposes of this case, followed Verizon's methods and procedures for installing xDSL loops (the benchmark KPMG used) 99% of the time, as KPMG found.<sup>77</sup> No one knows how Verizon's technicians would have performed had KPMG not informed them of its presence.<sup>78</sup>

Setting aside the contrived nature of the test, there are substantial questions about whether KPMG even randomly selected the xDSL installation appointments to monitor. Although KPMG testified at length in Massachusetts about the sample size selected for its test, it made no mention of using any random process to create the sample. To the contrary, KPMG indicated that it carefully formulated the sample by balancing various considerations against each other:

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<sup>75</sup> *Id.*

<sup>76</sup> Tr. 3203 (Sesko).

<sup>77</sup> KPMG Report at 210.

<sup>78</sup> For instance, Verizon's technicians would clearly not miss an installation appointment with a KPMG representative in tow.

What we tried to do is, we tried to pick a geographical mix, so we tried to pick some orders that were in a metropolitan area, we tried to pick some orders that were in more of a suburban area, so that we were sure that we were seeing a large sample of the type of installations that Bell Atlantic was dealing with.<sup>79</sup>

There is no point in using the sampling methodology without randomizing the sample.

KPMG's approach lacks the traditional indicia of reliability normally accorded to statistical analyses.

Moreover, even if KPMG's statistical methodology was not fundamentally flawed (as it plainly was), the test did not determine whether the observed provisioning efforts actually resulted in working loops. KPMG made no effort to correlate the installations with trouble tickets reported on those orders within 30 days of the installation date. For all KPMG knows, none of the loops tested worked. In fact, it is quite possible that KPMG never even looked at the orders for those loops, considering KPMG admitted that it did not know whether they had been pre-qualified.<sup>80</sup>

The testing of Verizon's xDSL performance was a shadow of what the Commission intended BOCs to do in the wake of the *New York 271 Order*. The Commission should lower the bar any further, given its past reliance on third-party testing, and should not accept KPMG's failure to perform DSL and linesharing testing as an acceptable level of proof.

#### KPMG Has Not Tested Verizon's Ability to Provide Line Sharing

Verizon must demonstrate its compliance with the *Line Sharing Order*, given the Commission's statement to that effect in approving the *SWBT Texas Section 271 Order*. Despite the Commission's unequivocal guidance on this issue, neither KPMG nor

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<sup>79</sup> Tr. 3364 (Bujan).

<sup>80</sup> See tr. 3203 (Sears) ("So we did not observe the actual loop qualification transaction occurring. We were relying on representation [sic] from the CLECs that those loop quals were done.").

Verizon nor the DTE even attempted to arrange for testing of Verizon's line sharing performance.

Verizon undoubtedly will respond that CLECs failed to place line sharing orders so that they could be tested. However, as explained in more detail above, Verizon missed the FCC's June 6, 2000 deadline for making line sharing available. Indeed, Verizon finished installing Covad's splitters less than one week ago. Given that the timing of the application, not to mention Verizon's willingness to meet the Commission's deadline for deploying line sharing, are each entirely within Verizon's control, the Commission should not excuse the lack of line sharing testing.

### **III. Access to Operations Support Systems**

#### **Legal Requirements**

In the *Local Competition First Report and Order*, the Commission concluded that access to OSS functions fit squarely within an incumbent LEC's obligation under section 251(c)(3) to provide nondiscriminatory access to UNEs, and its resale obligations under section 251(c)(4).<sup>81</sup> Thus, a BOC's failure to provide nondiscriminatory access to OSS means that the BOC has failed to comply with section 271(c)(2)(B)(ii) and (xiv).<sup>82</sup>

The Commission has established a two part inquiry in evaluating whether a BOC is meeting its statutory obligation to provide competing carriers with nondiscriminatory access to OSS functions.<sup>83</sup> First, the BOC must demonstrate that it has deployed the necessary systems and personnel to provide competing carriers with access to each of the necessary OSS functions, and that the BOC has adequately assisted competing carriers in

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<sup>81</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15660-61.

<sup>82</sup> *Second BellSouth Louisiana 271 Order* at ¶84.

<sup>83</sup> *See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd 20543, 20616 (1997).

understanding how to implement and use all of the OSS functions available to them. As the Commission explained in the *SWBT Texas 271 Order*:

For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC's systems and any relevant interfaces. In addition, a BOC must disclose to competing carriers any internal business rules and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently. Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS functions.<sup>84</sup>

A BOC must also demonstrate that the interfaces used to access its OSS functions allow competing carriers to transfer the information received from the BOC to their own back office systems (e.g., a competing carrier's billing system) and among the various interfaces provided by the BOC (e.g., pre-ordering and ordering interfaces).

Second, the BOC must demonstrate that the OSS functions and interfaces are operationally ready. As the FCC concluded in the *Second BellSouth Louisiana 271 Order*, the "most critical aspect of evaluating a BOC's OSS is the actual performance results of commercial usage or, in the absence of commercial usage, testing results."<sup>85</sup> In addition, the BOC's deployment of OSS functions to competing carriers must be able to handle current demand as well as reasonably foreseeable demand. For those OSS functions a BOC provides to a competing carrier that are analogous to OSS functions that the BOC provides to itself, the BOC must provide access to competing carriers that is equivalent to the level of access that the BOC provides to itself in terms of quality, accuracy and timeliness. For OSS functions without a retail analog, the BOC must

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<sup>84</sup> *SWBT Texas 271 Order* at para. 97.

<sup>85</sup> *Second BellSouth Louisiana 271 Order* at ¶ 92.

demonstrate that the access provided entrants offers an efficient competitor a meaningful opportunity to compete.

While actual commercial usage is the most probative evidence that the BOC's OSS functions are operationally ready, the FCC will also consider carrier-to-carrier testing, independent third-party testing, and internal testing.<sup>86</sup> As the Commission concluded in the *Second BellSouth Louisiana 271 Order*, the “most critical aspect of evaluating a BOC’s OSS is the actual performance results of commercial usage or, in the absence of commercial usage, testing results.”<sup>87</sup> Information that compares how the BOC provides access to OSS functions to itself and to competing carriers is critical in assessing whether the BOC is providing nondiscriminatory access to such functions as required by the statute.

Pre-order and loop qualification information

In the *UNE Remand Order*, the Commission imposed numerous additional OSS obligations on incumbent LECs relating to the provision of loop qualification information to competitors. Specifically, the Commission required incumbents, pursuant to section 251(c)(3) of the Act, to provide:

nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install. Based on these existing obligations, we conclude that, at a minimum, incumbent LECs must provide requesting carriers the same underlying information that the incumbent LEC has

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<sup>86</sup> *Ameritech Michigan 271 Order*, 12 FCC Rcd at 20618, *Second BellSouth Louisiana 271 Order* at ¶ 86. In the *SWBT Texas 271 Order*, the FCC emphasized that it relies on the state commission, not the party conducting the third party test, to ensure that the BOC is providing and continues to provide nondiscriminatory access to OSS. “We applaud the Texas Commission for its significant role in developing a third-party test in Texas, for its oversight of Telcordia’s review of SWBT’s OSS readiness, and for its continuing role in ensuring that SWBT provides access to its OSS in a non-discriminatory manner. We continue to encourage strong state participation in ensuring that the BOCs’ OSS can support competitive entry into the local markets.” *SWBT Texas 271 Order* at para. 101.

<sup>87</sup> *Second BellSouth Louisiana 271 Order* at ¶ 92.

in any of its own databases or other internal records. For example, the incumbent LEC must provide to requesting carriers the following: (1) the composition of the loop material, including, but not limited to, fiber optics, copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. Consistent with our nondiscriminatory access obligations, the incumbent LEC must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code, or on any other basis that the incumbent provides such information to itself.<sup>88</sup>

Such pre-ordering information is vital to competition, because “[c]ompeting carriers need access to this information to place orders for the products or services their customers want.”<sup>89</sup> Importantly, the Commission clarified that incumbent LECs like Verizon must provide access to loop prequalification information regardless of where that information resides in the incumbent LEC’s network, and regardless of whether the incumbent LEC’s retail operation uses such information.<sup>90</sup> Thus, Verizon must provide requesting carriers with all loop prequalification information that Verizon possesses anywhere in its network.

Because of the timing of the submission of SWBT’s section 271 application for Texas, the FCC specifically stated that it was not evaluating SWBT’s compliance with the new loop prequalification information requirements.<sup>91</sup> Because those rules are now in effect, Verizon must demonstrate to the Commission that it is in full compliance with those rules.

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<sup>88</sup> *UNE Remand Order* at para. 427.

<sup>89</sup> *Second BellSouth Louisiana 271 Order* at ¶ 94.

<sup>90</sup> *UNE Remand Order* at para. 430.

<sup>91</sup> *SWBT Texas 271 Order* at para. 165.

LFACS Access

Verizon contends that it satisfies its obligation to provide nondiscriminatory access to DSL loop prequalification information as follows. Specifically, Verizon contends that competitive LECs have access to “the same database that Verizon’s retail personnel use to qualify an end user customer’s line for Verizon’s retail ADSL service,” plus “data on why a loop does not qualify.”<sup>92</sup> As the Commission has repeated on numerous occasions, this is not the obligation imposed on Verizon. Rather, Verizon must provide requesting carriers access to loop pre-ordering information “that the incumbent LEC has in any of its own databases or other internal records.”<sup>93</sup> The obligation is not tied to information that Verizon’s retail representatives use, nor is it tied to an explanation as to why a loop was rejected.<sup>94</sup> Covad is entitled to all underlying loop information that Verizon possesses, and Verizon has refused to provide that information to Covad, in direct and ongoing violation of the Commission’s rules.

A timeline of Covad’s thus-far unsuccessful efforts to secure the access to loop pre-qualification information that Verizon is obligated to grant should provide helpful insight into the vital importance of the Commission’s rejection of the instant application. Only if the Commission sends the message that Verizon’s OSS compliance is lacking will Verizon relent and permit Covad to access the information it needs to offer service to its customers.

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<sup>92</sup> Verizon Lacouture/Ruesterholz Declaration at para. 108.

<sup>93</sup> *UNE Remand Order* at para. 427.

<sup>94</sup> Such information is vital to Covad’s ability to offer service. Questions of loop length, loop makeup, quality of the loop, and other technical parameters are vital to determining what flavors of DSL Covad can offer over that loop. Because Covad offers a much wider variety of DSL services than Verizon, the information that Verizon retail representatives use is woefully insufficient for Covad. Indeed, this is the exact reason the Commission adopted its stringent OSS rules: to ensure that Verizon could not wed competitors to its own retail services and nothing more innovative simply by limiting competitors’ access to loop information.

On August 10, 1999, the New York PSC held its first “DSL Collaborative” at then-Bell Atlantic’s office on State Street in Albany, New York. At that first collaborative, competitive LECs raised the issue of the need to access loop pre-qualification information, and their interest in attaining access to the Bell Atlantic OSS database containing such information, known as LFACS. Bell Atlantic stated that its retail representatives do not use LFACS to determine if a customer can be provided ADSL.

At the Jan. 6, 2000 collaborative meeting, Judge Stein again raised the issue of the loop prequalification needs of CLECs. Bell Atlantic stated that it would not provide CLECs direct access to the LFACS database. Bell Atlantic was asked how it would make loop prequalification information available to CLECs. At the February 2, 2000 collaborative, Bell Atlantic again refused to provide CLECs direct access to the LFACS database. It was not until the February 16, 2000 collaborative that Bell Atlantic made its proposal: CLECs could choose from three options: (1) loop prequalification data through indirect means (creating a separate database populated with loop information), (2) a “screen scrape” method of access; or (3) Telcordia could develop a new interface. Bell Atlantic refused to provide competitive LECs any direct access to the information in the LFACS database.

Also at the February 16, 2000 collaborative, Bell Atlantic was asked what information that was available in LFACS was not being made available to CLECs through alternate means. When by March, 2000, Bell Atlantic had still not provided such information, at the March 1, 2000 collaborative, Bell Atlantic stated that it did not provide the list of fields in LFACS to CLECs because Telcordia wanted all parties to sign

a nondisclosure agreement before Bell Atlantic released such information. On a March 3, 2000, conference call, moderated by Judge Stein and attended by representatives of Bell Atlantic and Telcordia, Telcordia stated that Bell Atlantic had never informed Telcordia that all Bell Atlantic was being asked to provide was a list of the fields available in LFACS. Bell Atlantic's attorney stated that he had not told Telcordia that CLECs were asking for only a list of fields. Upon learning that Bell Atlantic was only providing a list of fields in LFACs, Telcordia stated that no nondisclosure agreement was necessary. Bell Atlantic emailed a list of fields available in LFACs to the CLECs on that same day (March 3).

In the last several months, Verizon claims to have submitted a proposal to Telcordia for design of an interface to permit CLECs direct access to LFACS, but Bell Atlantic subsequently refused to provide CLECs a copy of that proposal. And so the battle for access to Verizon's OSS – access the Commission has required Verizon to provide – continues. Because Verizon insists on refusing to provide competitors access to all the loop prequalification information that Verizon possesses, Verizon is not in compliance with the OSS requirements of the checklist and the Act.

#### Verizon Inflates Its Collocation Power Charges

Verizon inflates its collocation power charges through a rate structure that goes against industry practice, its own cost studies and even common sense.

By way of background, Covad's collocated DSLAM equipment uses or, in the jargon of the industry, "drains" no more than 40 amps of power at any one point in time.<sup>95</sup> Although Covad requests 40 "drained" amps when setting up its collocation

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<sup>95</sup> Power is measured along two dimensions: amps and volts. Amps measure the volume of power, while volts measure the intensity of the power. One analogy for amps and volts would be water volume and

arrangements in Verizon central offices, Verizon fuses the power supply at 1.5 times the drained amps (or, in this case, 60 amps).<sup>96</sup> In addition to fusing, Verizon also provides a redundant power feed in case the primary feed fails. Even though there are two power feeds (both of which are fully operational and connected to Covad's equipment), Covad nevertheless does not draw more than 40 amps of power at any time.

Instead of charging Covad for 40 drained amps per piece of equipment, Verizon charges Covad for 120 amps. Verizon treats the 60 fused amps as if they were drained amps and multiplies this result by two to account for the back up power feed. These charging practices are unreasonable. Not surprisingly, Verizon's power charges are almost the highest in the country (surpassed only by the charges of its sister corporation in New York).

### **It Is Improper to Base Power Charges Upon Fused-Amps**

Covad should not pay for power based upon the number of fused amps. There is no circumstance in which Covad's equipment would use any more than the requested 40 amps, other than during an electrical surge (which in most cases would be caused by Verizon's equipment anyway and would cause the fuse to "blow"). In negotiations with Covad, Verizon has made the nonsensical argument that charging based upon fused amps is appropriate because Verizon has no way to meter how much power Covad consumes and that to do otherwise would encourage cheating. But the fact remains that Covad's equipment simply cannot use more than the requested 40 amps of power and operate

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pressure, each of which may vary in any given water pipe, but are clearly related to each other. For purposes of collocation power, amps are the relevant measurement.

<sup>96</sup> Fusing the power supply protects Covad's equipment from electrical surges in much the same way that household fuses before the advent of the circuit breaker protected home electrical systems. The reason that Verizon fuses at 1.5 times the drain is because fuses will not operate reliably as the power level exceeds 2/3 of the fuse's maximum-rated power capability. In other words, a 60 amp fuse becomes more likely to "blow" as the power climbs above 40 amps. Various factors determine a particular fuse's sensitivity, including the ambient temperature and the amount of time that the fuse actually handles power exceeding 2/3 of its rating.

reliably. It would be reckless for Covad or any other carrier, including Verizon, to exceed 2/3 of a fuse's rating. Whatever costs savings Covad could reap by pushing a 60 amp fuse to its limit would be quickly overwhelmed by the costs of dealing with constant service outages due to frequently blown fuses (forcing Covad to engage in emergency repair operations on a regular basis). Covad would never risk harming the integrity of its network, destroying its own equipment, jeopardizing the value of its customer goodwill, or incurring the cost of remedying constant service outages merely to siphon more than 40 amps of power illicitly.

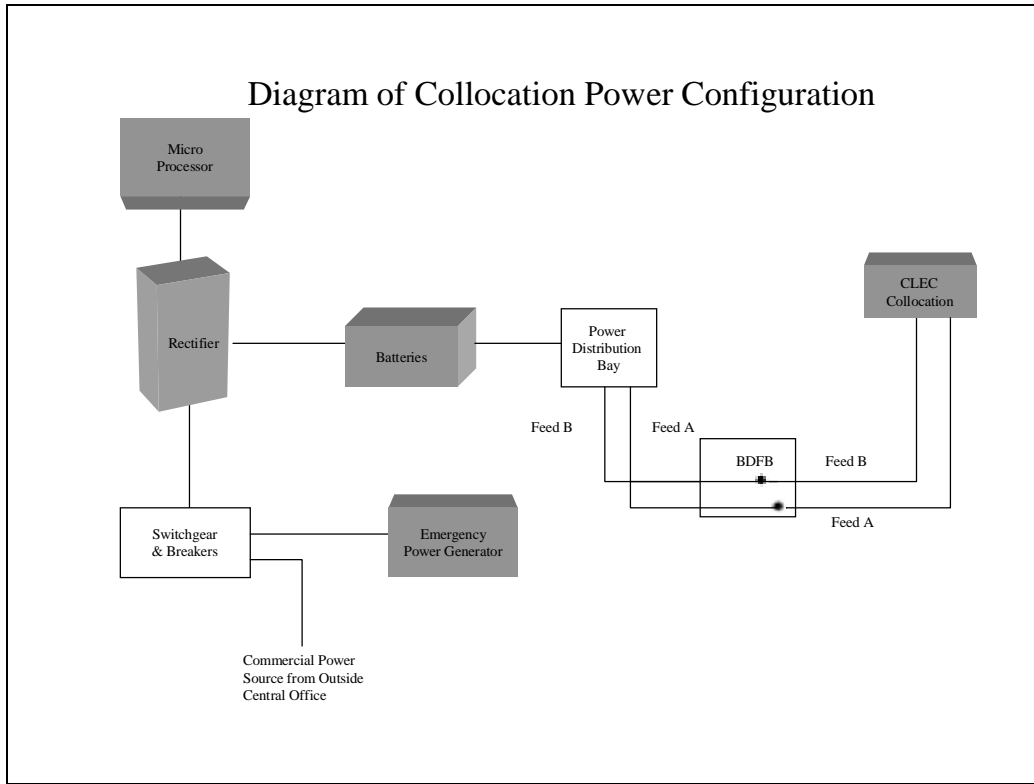
It is no coincidence that Verizon is the only Bell Operating Company in the country to charge for power based upon the rating of the fuse. Indeed, even Verizon's own FCC collocation tariff does not assess power charges in this manner. Rather, it bases power charges upon the amount of drained amps requested.

The Commission should not countenance Verizon's practice of charging for collocation power based upon the number of amps that are fused.

**It Is Unreasonable to Charge for Back-Up Power by Doubling the Fused Amps Or Even the Drained Amps**

Collocators typically request a back-up power feed with each primary feed serving their equipment. As noted above, Verizon assumes that the collocator consumes double the requested number of amps allegedly in order to recover the cost of the redundant power feed. Although Covad does not claim that Verizon should charge nothing for the back-up feed, Verizon's current charging practice is patently unreasonable.

The back-up power feed is not truly redundant. The following is a diagram of a typical power configuration arrangement serving a CLEC collocation site.



It is evident from the diagram that the primary feed (labeled “Feed A”) and the back-up feed (labeled “Feed B”) are redundant only starting at the Power Distribution Bay. There is no redundancy for any of the equipment that appears closer to the power source (labeled as “Commercial Power Source”), which accounts for the majority of the power costs. In fact, there is back-up power provided via an emergency generator even if the collocator orders only one feed, and Verizon’s rates already include the cost of that generator.<sup>97</sup>

The point of having a back-up feed is merely to ensure the continuous flow of power if a fuse blows at either the Power Distribution Bay or the Battery Distribution Fuse Bay (labeled as “BDFB”). Plainly, collocators should not pay double the recurring

<sup>97</sup> Attached hereto as Exhibit A is a non-proprietary workpaper from Verizon’s New York cost study supporting power charges. Verizon provided this material to resolve its dispute with Covad over power charges in Massachusetts. Verizon indicated that its Massachusetts power costs are based upon the same methodology as it used in New York.

power charges simply because they have an additional feed travelling from the Power Distribution Bay to their collocation arrangement (and consequently make *no* additional use of the other elements in the configuration, such as the emergency generator, the rectifier, the microprocessor, or the switchgear). At most, collocators should pay only for the cost of establishing the additional feed, which could even be paid on a nonrecurring basis. For these reasons, Verizon's back-up power charges are not based upon the cost of providing the service, as the Act requires.<sup>98</sup>

#### **IV. Miscellaneous Issues**

##### The PAP Does Not Cover DSL Appropriately

In Massachusetts, Verizon uses the New York Performance Assurance Plan ("PAP"), which the DTE adopted in substantial part on September 21, 2000. The PAP does not monitor and hold in check Verizon's xDSL performance effectively. As a result, there is a great risk that Verizon will back slide from its already poor xDSL performance.

The principal problem with the PAP is that it does not include xDSL as a "Mode of Entry," as it does for voice services. This exclusion ensures that the PAP does not take into account Verizon's performance on the entire range of xDSL metrics available. Instead, the PAP considers Verizon's performance, as part of the Critical Measures component of the PAP, on only three metrics: Average Response Time for Loop Qualification (Manual Qualification and Engineering Record Request), Percentage Loops Completed on Time, and Percent Installation Troubles. While these are important metrics, there is no reason not to consider the full gamut of metrics by making xDSL a

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<sup>98</sup> See 47 U.S.C. § 252(d)(1)(A).

Mode of Entry, as the PAP does for voice services. Otherwise, the PAP will ignore Verizon's poor performance on metrics such as Percent Orders Completed in Six Days, Average Interval Completed, and Mean Time to Repair.

Before it could approve Verizon's Section 271 application, the Commission must require Verizon to enhance the protection for xDSL under the PAP by making xDSL a separate Mode of Entry. In addition, the Commission must require Verizon to increase the amount of penalties available for violations of xDSL metrics to be at least equal to the penalties available for violations of voice metrics.

#### Verizon Should Extend the Hours of the TISOC

Covad, along with other CLECs including ATX, Cavalier Telephone, Net2000, NorthPoint, Picus, RCN, and Teligent, requested that Verizon expand the hours of the TISOC in order to facilitate the provisioning of a larger number of orders. Verizon refused this request on September 8, 2000, simply stating that the TISOC has ample resources to meet the needs of Covad or other CLECs. Given Verizon's exceptionally poor performance on xDSL metrics, discussed earlier, Verizon's conclusory response that the TISOC is adequately staffed is hardly persuasive. The Commission should take a hard look at this issue and require Verizon to demonstrate that expanding the TISOC's hours of operation would not improve its performance.

#### **V. Preliminary Response to Comments of the Massachusetts DTE**

The Massachusetts DTE, in comments made available to Covad shortly before the filing deadline, is clearly bending over backwards to support Verizon's application. Despite agreeing with Covad that Verizon is out of parity in every single metric that the

the Commission relies on, the DTE somehow arrives at the conclusion that Verizon's application satisfies the section 271 competitive checklist.

As to loop provisioning timeliness, the DTE concludes: "In the two most recent months (June and July), however, VZ-MA has required more time to provision these loops for CLECs."<sup>99</sup> Then, inexplicably, less than a page after rejecting Covad's objections to Verizon's OSS performance (stating that Covad must present its problems to the New York PSC to get the metric changed), the DTE accepts the litany of excuses that Verizon offers to explain away its poor provisioning performance.<sup>100</sup> In particular, the DTE accepts Verizon's argument that competitive LECs are "miscoding" LSRs as requiring manual loop qualification, without requiring *any* data from Verizon to back up that wild hypothetical.<sup>101</sup>

As to missed installation appointments, the DTE finds that a "review of these data shows that VZ-MA missed more installation appointments for CLECs than for its retail ADSL service."<sup>102</sup> Yet again, paradoxically, the DTE concludes that Verizon is in compliance with the competitive checklist.<sup>103</sup> Here is the extent of the DTE's analysis: "VZ-MA has indicated that it performed over 11,000 manual loop qualifications in

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<sup>99</sup> DTE Comments at 237.

<sup>100</sup> DTE Comments at 238 (accepting Verizon's argument that its poor loop provisioning performance should be overlooked because the provisioning metric "is susceptible to several of the same factors that affect VZ-MA's interval performance data for POTS loops").

<sup>101</sup> The Commission seems to simply accept at face value what it terms "VZ-MA indicates that in a study it conducted using approximately 3,000 June orders of two-wire digital and two-wire xDSL loops." DTE Comments at 238. First of all, the metric Verizon is trying to excuse itself from is for DSL loops only, not two-wire digital, so Verizon's June "study" is a distortion of its DSL-specific performance. Second, neither Covad, KPMG, or the DTE ever examined the purported study, meaning that the DTE has essentially thrown the performance metrics out the window and chosen to rely entirely on whatever "study" Verizon submits in their stead.

<sup>102</sup> DTE Comments at 239.

<sup>103</sup> The DTE appears to conclude that Covad did not meet its burden of proving that Verizon fails to install loops on time. DTE Comments at 240-41. Covad did not have the burden of disproving Verizon's performance; rather, Verizon had the burden of proving it. Because Verizon did not establish that it provided parity in installation intervals (which the DTE itself concluded), the evidentiary burden did not

Massachusetts for CLECs since the beginning of this year.” That’s it. No data to back it up, no analysis, no verification. All Verizon had to do to convince the DTE that its poor performance metric showing could be ignored is state that it performed over 11,000 manual loop qualifications. Covad submits that Verizon performed somewhere less than a few hundred (at most) of that number on Covad’s behalf, leaving open the question of what DSL carrier asked for the other 90+% of those manual loop qualifications (particularly since Covad is the largest DSL carrier operating in Massachusetts).

Something is dreadfully wrong with Verizon’s excuse here, and the DTE chose not to hold Verizon to any standard of proof. The performance metrics speak for themselves.

And there’s more. The DTE concludes that “VZ-MA’s data also show that it misses a higher percentage of installation appointments for CLECs than for its retail service.”<sup>104</sup> Again, however, the DTE concludes that Verizon’s own poor performance data can be ignored, because “VZ-MA has explained persuasively how including loops that are pre-qualified and loops that require manual loop qualification in the measure creates a mis-impression of a lack of parity.”<sup>105</sup> But then, after expressly relying on Verizon’s explanation to excuse its poor performance on this and other metrics, the DTE inexplicably states that “[w]hile VZ-MA is persuasive, as noted above, we cannot credit its quantification of this issue because it was not presented before us during our § 271 proceeding.”<sup>106</sup> The DTE thus concludes that Verizon never presented its “manual loop

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shift to Covad at any point. Indeed, the DTE concluded that “VZ-MA’s data indicate its provisioning performance has not yet reached formal parity.” DTE Comments at 242.

<sup>104</sup> DTE Comments at 244.

<sup>105</sup> *Id.* The DTE also bases its conclusion on Verizon’s statement that Covad has a higher DSL market share in Massachusetts than Verizon. As Covad has often stated in such proceedings, the fact that Covad hasn’t been forced out of business by Verizon’s practices, and the fact that Verizon is incompetent in providing retail DSL service, do not together excuse poor wholesale loop provisioning performance.

<sup>106</sup> DTE Comments at 244.

qualification” argument before the DTE, yet at the same time it relies on it in whole in approving Verizon’s application.

And yet again, as to loop quality, the DTE concludes that “[a]ccording to VZ-MA’s data, CLECs submit more trouble reports than VZ-MA does for its retail service.”<sup>107</sup> Here, the DTE accepts Verizon’s excuse that competitive LEC are accepting loops as “good” that are actually non-working loops, and then submitting a trouble ticket on those loops upon discovering that the loops actually do not work.<sup>108</sup> The DTE accepts Verizon’s argument, without any supporting data whatsoever, that competitive LECs are playing a game with trouble tickets. The DTE concludes that the performance metric on trouble tickets within 30 days should be ignored: “We will not draw negative performance implications on VZ-MA’s part derived from the conduct of some CLECs in playing an angle in the system.”<sup>109</sup> What conduct? Why on earth would Covad accept a nonworking loop, turn up service to its customer, and then open a trouble ticket while its customer sits around with a non-working service? Why would Covad deliberately accept a loop it knows doesn’t work, rather than rejecting the loop immediately and instructing Verizon to provide the functional loop to which Covad is entitled by law? Trouble tickets within 30 days means *Verizon provided a loop to Covad that did not work*. It’s as simple as that. The DTE’s decision to ignore Verizon’s terrible performance based on a hypothetical speculative argument about Covad’s motivations is simply incredible.

And there is more. As to repair and maintenance, the DTE concludes that “[a]s was the case with VZ-MA’s performance for certain maintenance and repair metrics for

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<sup>107</sup> DTE Comments at 247.

<sup>108</sup> DTE Comments at 248. This is the DTE’s logic: “Because VZ-MA is committed to addressing trouble tickets in a short amount of time, it appears CLECs willingly accept loops that require additional VZ-MA work.” *Id.*

POTS loops, VZ-MA requires additional time to repair CLEC xDSL loops on average than it does to repair its own retail loops.”<sup>110</sup> What’s Verizon’s excuse this time. Well, it turns out that the problem here is not that Verizon is discriminating against its competitors, but rather the problem “is the CLECs’ inability to direct VZ-MA’s technicians to the correct location of a trouble.”<sup>111</sup> Inexplicably, the DTE concludes that because competitive LECs experience a higher rate of repeat trouble tickets than Verizon retail, “[i]t is only logical that an unnecessary dispatch means that the VZ-MA technician is unable to attend to a bona fide trouble that much sooner.”<sup>112</sup> The DTE overlooked the possibility – indeed, the probability – that Verizon technicians simply failed to fix the trouble on the first dispatch, necessitating an additional dispatch. Why else would Covad call for – and be billed for – a second trouble report? Again, the DTE seems to think that Covad is playing a game with trouble reports. Covad loses money and customers with each out of service loop – it has absolutely no incentive to play any games. But as with the rest of Verizon’s excuses, the DTE requires no proof or substantiation – Verizon’s speculation is apparently sufficient to support its arguments.

Finally, despite the DTE’s clear recognition that Verizon is only “providing CLECs with real-time mechanized access to loop qualification information contained in the same database its retail employees use to qualify an end-user’s line for VZ-MA’s ADSL service,”<sup>113</sup> the DTE somehow concludes that Verizon is satisfying its pre-ordering OSS obligations. The Commission focuses on the timeliness of the inquiry

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<sup>109</sup> DTE Comments at 249.

<sup>110</sup> DTE Comments at 249.

<sup>111</sup> DTE Comments at 250.

<sup>112</sup> DTE Comments at 254.

<sup>113</sup> Comments of Massachusetts DTE at 233.

processeing – but ignores that most of the information that Covad is entitled to access via electronic pre-ordering OSS is not provided by Verizon.

The only point worth refuting in the DTE’s linesharing discussion is the Verizon excuse that the DTE relies upon to ignore Verizon’s failure to comply with the Commission’s linesharing rules. Verizon claims, and the DTE accepts at face value, that Covad was late in providing splitters to Verizon in Massachusetts. As a result, Verizon claims, it was unable to install the splitters to meet the Commission’s deadline. Covad is unaware of where in the “record” before the DTE the Department finds support for Verizon’s excuse.<sup>114</sup> The fact is, as discussed in greater detail in the linesharing discussion above, Covad ordered splitters months before Verizon completed its central office wiring, and Covad provided those splitters to Verizon promptly when Verizon informed Covad that it had completed the necessary preliminary central office work and was ready for the splitters. Until that time, the splitters sat, useless, in Covad’s warehouse space in New York.

## **VI. Conclusion**

For the reasons stated herein, the Commission should reject Verizon’s application pursuant to section 271 of the Act for authority to offer in-region interLATA service in Massachusetts.

Respectfully submitted,

\_\_\_\_\_/s/ Jason Oxman\_\_\_\_\_

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<sup>114</sup> DTE Comments at 259.